SUPREME COURT OF THE UNITED STATES.

No. 119.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

SHERMAN M. BOOTH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

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Petition for Writ of Error.

To the Hon. ROGER B. TANEY,
Chief Justice of the United States.

The petition of the undersigned, Attorney General of the United States, respectfully showeth:

That at the last January term of the district court of the United States, for the district of Wisconsin, Sherman M. Booth was found guilty upon an indictment for a violation of the act of September 18th, 1850, (chap. 40.) The indictment charged him with having aided, abetted, and assisted one Glover to escape from the custody of the deputy marshal, who had apprehended him by virtue of a warrant issued by a United States judge, before whom a complaint had been made by a person claiming the services of said Glover under the laws of the State of Missouri. The court sentenced Booth to one month's imprisonment, and to pay a fine of $1,000 and costs, and to stand committed until paid.

While Booth was in prison under this sentence, he was brought before the supreme court of Wisconsin on a writ of habeas corpus, and discharged on the ground that the United States district court, before whom he was tried and convicted, had no jurisdiction of the case; one of the judges also holding the act, under which the indictment was framed, was unconstitutional and void.

The principal question is, not whether the district court erred in the trial and conviction of Booth, but whether that court had jurisdiction to hear and determine the case. The United States insist that it had such jurisdiction, and that the State court had no power or authority to discharge said Booth from imprisonment.

The undersigned, therefore, states and shows unto your honor that, in the said record and proceedings, an exemplification of which is herewith presented, error in substance hath occurred; and to the end that the same and any other error appearing therein may be corrected, he prays the allowance of a writ of error to remove the same from the said court to the Supreme Court of the United States, for the correction of said error.

C. CUSHING,
Attorney General of the United States.

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the [L. S.] Supreme Court of the State of Wisconsin, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you,

or some of you, being the highest court of law or equity of the said State in which a decision could be had in the matter of the petition of Sherman M. Booth for a writ of habeas corpus, and to be discharged from imprisonment, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the United States, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court, the 21st day of April, in the year of our Lord one thousand eight hundred and fifty-five.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by

R. B. TANEY,
Chief Justice of the Supreme Court of the United States.

Filed 1 Feb'y, 1856.

On this fifth day of September, in the year of our Lord one thousand eight hundred and fifty-five, personally appeared John R. Sharpstein, attorney of the United States for the district of Wisconsin, and makes oath, that he delivered the annexed writ of error, together with a true copy thereof, to La Fayette Kellogg, esquire, clerk of the supreme court of the State of Wisconsin, at his office in Madison, the capital of said State, on the thirtieth day of May, in the year of our Lord one thousand eight hundred and fifty-five.

A. G. MILLER,
Judge Dis. Court of the United States for the Wisconsin District.

Citation.

The United States of America to Sherman M. Booth, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Wisconsin, wherein the United States are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered in your favor, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-first day of April, in the year of our Lord one thousand eight hundred and fifty-five.

R. B. TANEY.

On this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifty-five, personally appeared Stephen V. R. Ableman, U. S. marshal, before me, the subscriber, Benjamin K. Miller, clerk of the district court of the U. S. for the district of Wisconsin, and makes oath, that he delivered a true copy of the within citation to Sherman M. Booth, and at the same time showed him the within original citation on the day and year above stated.

B. K. MILLER,
Clerk U. S. D. Court, Wisconsin.

Filed in the clerk's office, May 11th, 1855.
L. F. KELLOGG, *Clerk S. C.*

Withdrawn by marshal June 5th, 1855.
Filed July 10th, 1855.
L. F. KELLOGG, *Clerk S. C.*

Refusal to make Return.

Supreme Court of the United States.

THE UNITED STATES OF AMERICA, plaintiff in error,
vs.
SHERMAN M. BOOTH, defendant in error.

DISTRICT OF WISCONSIN, *ss.*

I, John R. Sharpstein, attorney of the United States for said district, do solemnly swear, that I have been informed by La Fayette Kellogg, esq., clerk of the supreme court of the State of Wisconsin, and also by Abram D. Smith, an associate justice of said court, that the said court directed the said clerk to make no return to the writ of error issued out of the Supreme Court of the United States in the above entitled cause, and by this deponent served according to law and the rules of the said last mentioned court; and that the said supreme court, of the State of Wisconsin, further directed the said clerk to enter no

order upon the journal or records of said court concerning the same; and further deponent says not.

J. R. SHARPSTEIN.

Subscribed and sworn to this 30th day of Nov'r, A. D. 1855, before me,

B. K. MILLER,
Clerk U. S. District Court, Wisconsin.

Motion of Mr. Attorney General Cushing.

SUPREME COURT OF THE UNITED STATES,

December Term, 1855.

THE UNITED STATES
vs.
SHERMAN M. BOOTH.

And the Attorney General of the United States comes into court and moves for an order upon the clerk of the supreme court of the State of Wisconsin, directing said clerk to make return to the writ of error to said last mentioned court, allowed by the chief justice of the United States, and to said court directed, and which was filed in the office of said clerk, on or about the 30th day of May, 1855, and that he file such return in this court on or before the first day of the next term thereof, to be held in the city of Washington, on the first Monday of December next.

C. CUSHING, *Attorney General.*

Dated May 9, 1856.

Opinion and Rule of Court.

SUPREME COURT OF THE UNITED STATES,

December Term, 1855.

In the matter of

THE UNITED STATES
vs.
SHERMAN M. BOOTH.

Mr. Chief Justice Taney delivered the opinion of the court.

The court proceed to dispose of the motion made by the Attorney General to docket the case of The United States vs. Booth, to stand for argument in this court at the next term.

In support of this motion he has produced a copy of the record of the proceedings in the supreme court of Wisconsin in the above mentioned case, certified by the clerk under the seal of the court, by which it appears that Booth was indicted in the district court of the United States for the district of Wisconsin, for aiding a fugitive slave to escape from the custody of the marshal—the marshal having the said slave at that time legally in his custody; and that upon that indictment the

said Booth was tried and found guilty, and sentenced by the court to be imprisoned for one month, and to pay a fine of one thousand dollars. That while he was thus imprisoned he obtained a writ of habeas corpus from the State court; and, upon a hearing in the supreme court of the State, was discharged from imprisonment by that court, upon the ground that the imprisonment under the sentence of the district court of the United States was illegal.

It further appears, that a writ of error afterwards issued from this court, at the instance of the Attorney General in behalf of the United States, returnable to the present term, and directed to the judges of the supreme court of the State of Wisconsin, in order to bring the said proceedings and judgment here for revision, according to the provisions of the 25th section of the act of Congress of 1789, ch. 20. But no return has been made to the writ; and it appears by the affidavit of the district attorney, filed with the motion, that the writ of error was duly served on the clerk of the supreme court of the State, and that he was informed by the said clerk that the court had directed him to make no return to the writ of error.

Upon this state of facts the Attorney General has made the motion above mentioned.

The writ of error, without doubt, was rightfully issued from this court, to carry into execution the appellate powers confided to it by the Constitution and laws of the United States; and it was the duty of the clerk to obey it, and to send a transcript of the record and proceedings therein mentioned, together with the writ of error, to this court at the present term. And certainly the order of no other tribunal will justify an officer in disobeying the process of this court lawfully issued.

The refusal of the clerk, however, cannot prevent the exercise of the appellate powers of this court; and the court will take such order in the case as will enable it to fulfil the duties imposed upon it.

But in a matter of so much gravity and importance, we deem it proper, before any other proceeding is had, to lay a rule upon the clerk to make the return required by the writ of error, on or before the first day of the next term of this court; or to show cause, if any he hath, to excuse or justify his neglect or refusal to obey the writ.

The motion to docket the case is, therefore, continued over to the next term, and the court will make the following order:

Rule.

It having been suggested and shown to this court by the Attorney General of the United States, that the writ of error heretofore allowed and awarded by the chief justice of the Supreme Court of the United States, and which issued out of this court, pursuant to the several acts of Congress in such case made and provided, directed to the supreme court of the State of Wisconsin, requiring the record and proceedings of the said supreme court of the State of Wisconsin in the matter of Sherman M. Booth, for a writ of habeas corpus and to be discharged from imprisonment, to be sent to this court, has not been returned pursuant to the exigency of the said writ:

It is thereupon ordered, that the clerk of said supreme court of the State of Wisconsin do make due return of the said writ of error, pursuant to the mandate therein contained, and according to the laws of the United States in that behalf, on or before the first day of the term of this court next to be holden at the city of Washington, on the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-six, or then and there show cause why such return has not been made in conformity to law. And it is further ordered, that a copy of this rule be served on the said clerk, on or before the first day of August next.

I, William Thomas Carroll, clerk of the Supreme Court of the United States, do hereby certify that the preceding two printed pages contain a true copy of the opinion and rule of said court, made in the above entitled case, at December term, 1855, as the same remains on the records of said court.

In testimony whereof I have hereunto set my hand and affixed [L. S.] the seal of the said Supreme Court, at the city of Washington, this twelfth day of June, A. D. 1856.

WM. THOS. CARROLL,
Clerk of the Supreme Court U. S.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

Stephen V. R. Ableman, marshal of the United States for the district of Wisconsin, being sworn, deposes and says that he served the within opinion and rule of the Supreme Court of the United States, on La Fayette Kellogg, clerk of the supreme court of the State of Wisconsin, at Madison, on the 7th day of July, A. D. 1856, by delivering to him personally a copy thereof, as certified by the clerk of the Supreme Court of the United States.

S. V. R. ABLEMAN,
U. S. Marshal.

Subscribed and sworn to before me, this 14th day of July, A. D. 1856.

B. K. MILLER,
Clerk and Commissioner.

Filed 22d July, 1856.

Motion of Mr. Cushing.

SUPREME COURT OF THE UNITED STATES,
Of December Term, 1856.

In the matter of
THE UNITED STATES
vs.
SHERMAN M. BOOTH.

The Attorney General of the United States comes into court and shows to the judges thereof, that the United States have caused a copy

of the opinion filed and rule entered in this cause at the last term to be served, as required by said rule, upon the clerk of the supreme court of the State of Wisconsin, requiring him to make return to the writ of error in this cause, and gives the court to understand that he has not made such return: And he thereupon moves for leave to file a duly certified copy of the record filed in said supreme court, and to docket the cause in this court, in conformity with the motion made at the last term thereof.

C. CUSHING, *Att'y Gen'l.*

Filed 27th Feb., 1857.

Pleas before the supreme court of the State of Wisconsin, at a term thereof begun and held at the capitol in Madison, the seat of government of said State, on the second Tuesday, to wit: the 12th day of December, A. D. 1854.

Present, the Hon. Edward V. Whiton, chief justice, and the Hon. Abram D. Smith and the Hon. Samuel Crawford, associate justices of said court; La Fayette Kellogg, clerk.

Be it remembered, that heretofore, to wit, on the thirty-fifth day of the term aforesaid, it being the 26th day of January, A. D. 1855, came into the said supreme court, before the justices thereof, Sherman M. Booth, by his attorneys, J. H. and B. Paine, and filed his petition for a writ of habeas corpus and to be discharged from imprisonment and restraint, which said petition is in the words and figures following, to wit:

To the Supreme Court of the State of Wisconsin:

Your petitioner, Sherman M. Booth, of the city and county of Milwaukie, in said State, respectfully represents to the said court, that he, the said Booth, is imprisoned and restrained in his liberty in the county jail of said Milwaukie county, in said city, by Samuel S. Conover, the sheriff of said county. That he, the said Booth, is not committed or detained by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of any execution issued on such judgment or decree.

But your petitioner states, that the cause and pretence of the said imprisonment and restraint of your petitioner are, to the best of your petitioner's knowledge and belief, set forth and contained in a transcript of the record of the district court of the United States for the district of Wisconsin, a true copy of which transcript is hereunto annexed, marked "A," which your petitioner prays may be taken as a part of this his petition. And your petitioner states that said transcript, duly certified by the clerk of said district court, containing a copy of said indictment and of the record entries of the proceedings on the trial of your petitioner thereon, and of a pretended sentence pronounced upon your petitioner, by the said district court, is the only paper left with the jailer of said county by the marshal of the United States for said district, who committed your petitioner to said jail, and is the only paper by the pretended authority of which your petitioner is detained.

Your petitioner alleges that the said imprisonment and restraint are illegal, and that said illegality consists in the facts that the act of Congress approved September eighteenth, in the year of our Lord one thousand eight and fifty, commonly called the "Fugitive Slave Law," is unconstitutional and void—that the fourth and fifth counts of said indictment, on which alone your petitioner was found guilty, were framed under the said Fugitive Slave Law, and were intended to charge a violation of said law; which facts, that said counts were so framed under said Fugitive Slave Act, and were intended to charge a violation of said act, were admitted by the district attorney of the United States and the counsel for the prosecution, and the said district court throughout the whole of said trial. For which said reasons, your petitioner alleges that the said district court had no jurisdiction to try or punish your petitioner for the offence charged, or attempted to be charged upon your petitioner in the said fourth and fifth counts, and that the said verdict of the said jury finding your petitioner guilty, as charged in said counts, and also the said sentence of the said district court pronounced upon your petitioner, as well as the whole proceedings of said district court in trying and sentencing your petitioner on said fourth and fifth counts, were and are void and of no force, and are absolute nullities in law. And therefore it is that your petitioner avers and claims, as hereinbefore set forth, that he is not committed or detained by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, because he says that the said district court had no jurisdiction and was not competent to try or sentence your petitioner for an alleged violation of said Fugitive Slave Act.

And your petitioner further alleges that said imprisonment is illegal for the further reason that neither the said fourth nor the said fifth count charges on your said petitioner any offence against the said Fugitive Slave Act, or against any other act of Congress, and that therefore the said district court had no jurisdiction to try or sentence your petitioner on said counts. And further states, that a motion was made by the counsel of your petitioner in his behalf, to arrest the said judgment, for the reason that in neither or said counts was there any allegation that the said Joshua Glover was a fugitive from service or labor, or was a person owing service or labor, so as to describe the offence punished by said act of Congress, which said motion was argued and overruled by the court.

And your petitioner further avers, that at the time when the said jury returned the said verdict to the said district court, a written paper was handed by said jury to the said court, and the said court announced the verdict to be guilty, as charged in the fourth and fifth counts; and after the jury was polled, something was said by one of the jurors to the said court, which your petitioner did not hear, but in answer thereto the said court replied that they found "not guilty" on the first three counts, and asked the jury if such was their verdict, to which several of the jurors answered "yes," and none dissented, and the said court thereupon said it should be so entered.

But your petitioner further states that said verdict was not so entered, but was entered in the manner set forth in said transcript. And your petitioner further avers that he has been informed by B. Paine, one of his counsel, and so charges, that the attention of said district court was called to the manner in which said verdict was entered, afterwards by the said counsel, with a request that it might be then entered on the record "not guilty on the first three counts," according to the statements of said court and said jury at the time said verdict was rendered; but that said court refused to have the record so corrected, and said that he asked the said jury if their verdict was not guilty on the first three counts "as a matter of form," but that it could not be so entered, for it would be entering a contradiction on the record, as the said court considered the said first three counts as virtually merged in the said last two. And your petitioner believes, and so avers, that that part of said verdict so declaring your petitioner not guilty as aforesaid, was fraudulently suppressed and refused to be entered by the said district court. And your petitioner further avers, that he has been informed also by his said counsel, that he, said counsel, had applied to the clerk of said district court, to know if the written verdict of said jury was on file or among the papers in said suit, and that he, the said counsel, was informed by the said clerk that it was not on file, and he, the said clerk, had never seen it. And your petitioner further avers, that he has been informed by one George F. Austin, one of the said jury, that the written verdict of said jury found your petitioner "not guilty" on the said first three counts, and your petitioner avers upon said information that such was the fact.

And your petitioner further avers that one Stephen V. R. Ableman, the marshal of the United States for said district, committed your petitioner to said jail, and your petitioner believes that it is claimed or pretended by the said marshal and the said district court, that your petitioner is still in the custody, or at least under the control, of said marshal.

Your petitioner therefore prays that a writ of habeas corpus may be issued in his favor, directed to the said Samuel S. Conover and to the said Stephen V. R. Ableman, if the facts hereinbefore set forth will justify the directing of said writ to said Ableman, commanding him, the said Conover, or them, the said Conover and Ableman, and each of them, to bring your petitioner forthwith before you, the said supreme court, to show cause for the said imprisonment of your petitioner; and further prays, that on the hearing of this his application, he may be discharged from said imprisonment and restraint.

S. M. BOOTH.

STATE OF WISCONSIN,
Milwaukee county, ss.

I, Sherman M. Booth, the foregoing petitioner, being duly sworn on oath, say that I have heard the foregoing petition for a habeas corpus read, and that the matters and things therein set forth, as of my own

knowledge, are true in substance and fact; and the matters and things therein set forth as of the information of others, I believe to be true in substance and fact.

SHERMAN M. BOOTH.

Subscribed and sworn to before me this 24th day of January, A. D. 1855.

M. STEEVER,
Notary Public, residing in Mil. Co., Wis.

"A."

UNITED STATES OF AMERICA,
District of Wisconsin.

At a stated term of the district court United States of America for the district of Wisconsin, begun and held according to law, on the first Monday (being the first day) of January, A. D. 1855, at the city of Milwaukee, in said district of Wisconsin, present the Honorable Andrew G. Miller, judge of said court, presiding.

On the fourth day of said term, to wit, on the fourth day of January, A. D. 1855, the following proceedings were had, to wit:

This day came into court the grand jury, and presented to the court the following bill of indictment, to wit:

THE UNITED STATES OF AMERICA }
vs. }
SHERMAN M. BOOTH. }

Indictment for obstructing, resisting, and opposing the execution of process, and aiding, abetting, and assisting the escape of Joshua Glover from the custody of the deputy U. S. marshal. "A true bill."

Which said bill of indictment is as follows:

UNITED STATES OF AMERICA,

District Court of the United States for the district of Wisconsin, of the term of January, in the year of our Lord one thousand eight hundred and fifty-five.

DISTRICT OF WISCONSIN, *ss.*

The jurors of the United States empanelled and sworn to inquire in and for the body of the district of Wisconsin, upon their oath present, that heretofore, to wit, on the ninth day of March, in the year of our Lord one thousand eight hundred and fifty-four, a certain warrant directed to the marshal of the said district of Wisconsin was duly awarded and issued by the Honorable Andrew G. Miller, judge of the district court of the United States for the said district of Wisconsin, for the apprehension of one Joshue Glover, which said warrant was duly delivered to Charles C. Cotton, esquire, an officer of the United States, to wit, a deputy of the marshal of the United States for the said district of Wisconsin, at Milwaukee, in the district aforesaid, on the said ninth day of March, in the year aforesaid, and was of the purport and effect following, that is to say:

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

The President of the United States of America to the Marshal of the
[SEAL.] District of Wisconsin, greeting:

Whereas, Benammi S. Garland hath made affidavit before me, the judge of the district court of the United States of America, for the district of Wisconsin, that one Joshua Glover, a negro man, owes him labor and service according to the laws of Missouri, wherein he, the said affiant, lives and resides; and that he, the said Joshua Glover, ran away from said affiant in the county of St. Louis and State Missouri, in the spring of one thousand eight hundred and fifty-two; and that he, the said Joshua Glover, he believes, is now in this State of Wisconsin.

And said affiant further says, that, at the time of his said running away, he, the said Joshua Glover, was, and is now, a slave for life, and owned by him, the said affiant; and, as such slave, did owe, and still does owe him, this affiant, labor and service, under and by virtue of the said laws of Missouri, from whence the said Joshua Glover escaped.

The said Joshua Glover is described in said affidavit to be forty-four or forty-five years of age, about five feet six or eight inches high, spare built, with rather long legs, very prominent knuckles, has large feet and hands, has a full head of wool, eyes small and inflamed, is of dissipated habits, is of rather an ashy black color.

These are therefore to command you, the said marshal, to apprehend said fugitive, Joshua Glover, if to be found in your district, and bring him forthwith before me, at the city of Milwaukee, so that the matters alleged against him may be inquired into according to law.

In witness whereof, I have hereto set my hand and seal at Milwaukee, in the district aforesaid, this ninth day of March, A. D. 1854.

A. G. MILLER,
Judge District Court of the United States,
For the District of Wisconsin.

And the jurors aforesaid do further present, that the said warrant being duly awarded, issued, and delivered as aforesaid, afterwards, to wit, on the eleventh day of March, in the year aforesaid, at Milwaukee aforesaid, in the said district of Wisconsin, the said Charles C. Cotton, then and there being an officer of the said United States, to wit, a deputy of the marshal of the United States for the district aforesaid, attempted to serve and execute the said warrant in manner and form as he was therein commanded, and that Sherman M. Booth, late of Milwaukee, in said district, with divers other persons, to the said jurors unknown, being then and there well and truly informed of the premises, then and there with force and arms did knowingly, wilfully, and unlawfully obstruct, resist, and oppose the said Charles C. Cotton, then and there being an officer of the said United States as aforesaid, to wit, a deputy of the marshal of the United States for said district, in attempting, as aforesaid, then and there to serve and execute the said

warrant in manner and form as he was therein commanded, to the great damage of the said Charles C. Cotton, to the great hindrance and obstruction of justice, to the evil example of all others in the like case offending, against the form of the statute of the United States in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that on the eleventh day of March, in the year of our Lord one thousand eight hundred fifty-four, at Milwaukee, in said district of Wisconsin, the said Sherman M. Booth, with force and arms, did knowingly and wilfully obstruct, resist, and oppose one Charles C. Cotton, a deputy of one Stephen V. R. Ableman, marshal of the United States for the district of Wisconsin, and an officer of the United States, in serving and attempting to serve and execute a certain warrant and legal process, which, before that time, to wit, on the ninth day of March, in the year last aforesaid, had been duly issued under the hand and seal of Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, and directed to the marshal of the said district of Wisconsin, which the said Charles C. Cotton, in the due and lawful execution of his said office, had then and there in his hands and possession for service of the same, and which he was then and there serving, and attempting to serve and execute, which said warrant commanded the said Charles C. Cotton to apprehend one Joshua Glover, and have him forthwith before the said judge, that the matters alleged against him might be inquired into according to law, against the form of the statute of the United States in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that on the eleventh day of March, in the year of our Lord one thousand eight hundred and fifty-four, at Milwaukee, in the district of Wisconsin aforesaid, the said Sherman M. Booth, with force and arms, did knowingly and wilfully obstruct, resist, and oppose one Charles C. Cotton, a deputy of Stephen V. R. Ableman, marshal of the United States for the said district of Wisconsin, and an officer of the said United States, in serving, and attempting to serve and execute a certain legal process, which, before that time, to wit, on the ninth day of March, in the year last aforesaid, had been duly issued by Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, and duly delivered for execution to the said Charles C. Cotton, wherein and whereby, and in pursuance of the command, whereof the said Cotton was then and there lawfully retaining, detaining, and holding in custody, one Joshua Glover, for the further hearing and determination of a certain complaint upon which a warrant before that time, to wit, on the said ninth day of March, in the year last aforesaid, had been duly issued under the hand and seal of Andrew G. Miller, judge as aforesaid, by force of which said warrant the said Joshua Glover had been duly arrested and apprehended by the said Cotton, and in execution of the same, on the said eleventh day of March, had been brought by said Cotton and committed to the com-

mon jail of the county of Milwaukee, in the district aforesaid, against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that Sherman M. Booth, late of Milwaukee, in the district of Wisconsin, on the eleventh day March, in the year one thousand eight hundred and fifty-four, at the said city of Milwaukee, in the said district of Wisconsin, with force and arms, did knowingly and wilfully aid, abet, and assist one Joshua Glover to escape from the custody of Charles C. Cotton, then and there being a deputy marshal of the United States for the said district of Wisconsin, he, the said Joshua Glover, having been theretofore apprehended by, and then and there being in the custody of the said Charles C. Cotton, as such deputy marshal of the United States for the said district aforesaid, by virtue of and in obedience to a certain warrant theretofore issued by Andrew G. Miller, then and there being the judge of the district court of the United States for the said district of Wisconsin, which, the said warrant, is in the words and figures following, that is to say:

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

The President of the United States of America to the Marshal of the
[SEAL.] District of Wisconsin, greeting:

Whereas, Benammi S. Garland hath made affidavit before me, the judge of the district court of the United States of America, for the district of Wisconsin, that one Joshua Glover, a negro man, owes him labor and service according to the laws of Missouri, wherein he, the said affiant, lives and resides, and that he, the said Joshua Glover, ran away from said affiant in the county of St. Louis and State of Missouri, in the spring of one thousand eight hundred and fifty-two, and that he, the said Joshua Glover, he believes, is now in the State of Wisconsin.

And said affiant further says, that at the time of his said running away, he, the said Joshua Glover, was, and is now, a slave for life, and owned by him, the said affiant, and as such slave, did owe, and still does owe him, this affiant, labor and service, under and by virtue of the said laws of Missouri, from whence the said Joshua Glover escaped.

The said Joshua Glover is described in said affidavit to be forty-four or forty-five years of age, about five feet six or eight inches high, spare built, with rather long legs, very prominent knuckles, has large feet and hands, has a full head of wool, eyes small and inflamed, is of dissipated habits, is of rather an ashy black color.

These are therefore to command you, the said marshal, to apprehend said fugitive, Joshua Glover, if to be found in your district, and bring him forthwith before me, that the matters alleged against him may be inquired into according to law.

In witness whereof, I have hereto set my hand and seal at Milwaukee, in the district aforesaid, this ninth day of March, A. D. 1854.

A. G. MILLER,
Judge District Court of the United States,
For the District of Wisconsin.

Against the form of the statute of the United States, in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that on the ninth day of March, in the year one thousand eight hundred and fifty-four, one Benammi S. Garland appeared before Andrew G. Miller, then and there being the judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district of Wisconsin, and then and there made oath in writing before the said Andrew G. Miller, as such judge aforesaid, that he resided near the city of St. Louis, in the State of Missouri; that Joshua Glover, a negro, had been, and then was, held to service and labor to him, the said Bennanmi S. Garland, as a slave in the said State of Missouri, and then still owed service and labor to him, the said Benammi S. Garland, as such slave; that the said Joshua ran away from the said Benammi S. Garland, in the county of St. Louis, in the State of Missouri, in the spring of 1852; that he, the said Benammi S. Garland, had ascertained, and verily believed, that the said Joshua then was in the State of Wisconsin, at or near the city of Racine; that at the time of the running away and escape of said Joshua he was a slave for life, and under and by virtue of the laws of the State of Missouri, was the slave of him, the said Benammi S. Garland, and was then such slave, and had owed, and then still owed labor and service, under and by virtue of said laws, to him, the said Benammi S. Garland; that Joshua then was about forty-four or forty-five years of age, about five feet six or eight inches high, spare built, with rather long legs, very prominent knuckles, had large feet and hands, had a full head of wool, eyes small and inflamed, was of dissipated habits, was of rather an ashy color, had one of his shoulders stiff from dislocation, and had stooping shoulders, and a slow gait; that he, the said Benammi S. Garland, purchased said Joshua, as a slave for life, in the State of Missouri, and under and by virtue of the laws of said State, on the first day of January, A. D. 1849, and had never alienated his title to said slave, nor released him from the labor and service so due to him as aforesaid; that the said Benammi S. Garland was a farmer, and carried on a farm about four miles from said city of St. Louis; that he used and employed said Joshua as foreman on his said farm, from the time of said purchase to the time of the escape of said Joshua as aforesaid; that he had seen the said Joshua daily, knew him well, and could at sight identify him with certainty; that the said Joshua had been, and was of great value to him, the said Benammi S. Garland, as his slave for life, and on account of the labor and services of the said Joshua so due to him as aforesaid.

And the jurors aforesaid do further present, that thereupon the said Andrew G. Miller, then and there being such judge as aforesaid, afterwards, to wit, on the same day and year, and at the place last aforesaid, issued a certain warrant under his hand and seal, bearing date the day and year last aforesaid, and directed in the name of the President of the United States of America to the marshal of the said district of Wisconsin, reciting that whereas the said Benammi S. Garland had made affidavit before him, the said Andrew G. Miller, the judge of the district court of the United States of America for the district of Wisconsin, that one Joshua Glover, a negro man, owed him, the said Benammi S. Garland, labor and service according to the laws of Missouri, wherein he, the said affiant, Benammi S. Garland, then lived and resided; and that he, the said Joshua Glover, had run away from him, the said affiant, in the county of St. Louis and State of Missouri, in the spring of one thousand eight hundred and fifty-two, and that he, the said Joshua Glover, he, the said Benammi S. Garland believed, was then in this State of Wisconsin.

And the said affiant further said, that at the time of his said running away, he, the said Joshua Glover, had been, and then was, a slave for life, and owned by him, the said affiant, and as such slave had owed, and then still did owe, the said affiant labor and service, under and by virtue of the said laws of Missouri, from whence the said Joshua Glover escaped.

The said Joshua Glover was described in said affidavit to be forty-four or forty-five years of age, about five six or eight inches high, spare built, with rather long legs, very prominent knuckles, had large feet and hands, had a full head of wool, eyes small and inflamed, was of dissipated habits, was of rather an ashy black color, and therefore commanding him, the said marshal, to apprehend the said fugitive, Joshua Glover, if to be found in his, the said marshal's district, and bring him forthwith before him, the said Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, so that the matters alleged against him might be inquired into according to law; which said warrant was afterwards, to wit, on the day and year last aforesaid, at the place last aforesaid, delivered to Charles C. Cotton, then and there being a deputy marshal of the United States for the said district of Wisconsin, to be by him executed; and that the said Charles C. Cotton then and there being such deputy marshal as aforesaid, afterwards, to wit, on the eleventh day of March, in the year last aforesaid, at the place last aforesaid, by virtue of and in obedience to the said warrant, apprehended the said Joshua Glover, in the said warrant named, and then and there held him, the said Joshua Glover, in custody.

And the jurors aforesaid do further present, that the said Sherman M. Booth, afterwards, to wit, on the day and years last aforesaid, and at the place last aforesaid, with force and arms, did unlawfully, knowingly, and willingly aid, abet, and assist the said Joshua Glover to escape from the said custody of the said Charles C. Cotton, against the

form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

J. R. SHARPSTEIN,
U. S. District Att'y for Wis.

And afterwards, to wit, on the eighth day of the term, to wit, on the ninth day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day came the defendant and his counsel, and moved the court to quash the indictment for reasons filed, and the same being argued, on consideration whereof, it is ordered by the court that the said motion be, and hereby is, overruled.

And the defendant appeared with his counsel, Messrs. James H. Paine and Byron Paine, and waived an arraignment, pleaded not guilty, and of this he puts himself upon the country. Replication, &c. And the district attorney doth the like. Issue.

And afterwards, to wit, on the ninth day of the said term, to wit, on the tenth day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day came the defendant, with his counsel, and challenged the array of jurors for reasons filed, and the same being argued, it is ordered by the court that the said challenge be, and hereby is, overruled. And came the district attorney, and the said defendant, with his counsel, and the issue herein joined came on to be tried, whereupon a jury was called to try the same, who came, to wit: Cicero Comstock, Peter Martineau, Henry C. West, Daniel Phelps, Benjaman R. Hinckley, Andrew Eble, John Niler, William Finkler, Hiram J. Ross, John H. Butler, Joseph R. Treat, and George F. Austin, twelve free, honest, and lawful men, of the district, who were severally sworn and empanelled by the court, and the trial not being concluded, it is ordered by the court that the further hearing be, and is hereby adjourned until to-morrow morning.

And afterwards, to wit, on the tenth day of the said term, to wit, on the eleventh day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day came the district attorney and the said defendant, Sherman M. Booth, with his counsel, and the trial of the issue herein was

resumed, and not being concluded, it was ordered by the court that the further hearing be, and hereby is, adjourned until to-morrow morning. And afterwards, to wit, on the eleventh day of the said term, to wit, on the twelfth day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day came the district attorney and the said defendant, Sherman M. Booth, with his counsel, and the trial of the issue herein was resumed, and not being concluded, it is ordered by the court that the further hearing be, and is hereby, adjourned until to-morrow morning.

And afterwards, to wit, on the twelfth day of the said term, to wit, on the thirteenth day of January, A. D. 1855, the following other proceedings were had, to wit:

UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day came the district attorney and the said defendant, Sherman M. Booth, with his counsel, and the trial of the issue was herein resumed, and the said jurors of the jury aforesaid being charged by the court, on their said oaths respectively do say, that the defendant, Sherman M. Booth, is guilty in manner and form as he stands indicted in the fourth and fifth counts of the indictment.

And afterwards, to wit, on the fourteenth day of the term, to wit, on the sixteenth day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day came the defendant, by his counsel, and moved the court for a new trial of the issue herein and to arrest the judgment in this cause, for reasons filed.

And afterwards, to wit, on the 18th day of the term, to wit, on the 20th day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day the motion of the defendant for a new trial and in arrest of judgment came on to be heard and was argued by counsel, and the court not being sufficiently advised of and concerning the same, took time to consider.

And afterwards, to wit, on the twentieth day of the said term, to wit, on the 23d day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day, the court being sufficiently advised of and concerning the motion of this defendant for a new trial and in arrest of judgment, doth order, that they be, and hereby are, overruled. Whereupon, the court doth sentence Sherman M. Booth, that he be imprisoned for the term of one month in the jail of Milwaukee county, or in such other prisons or places as the court or the judge thereof may from time to time direct, and that he pay a fine of one thousand dollars and the costs of prosecution to be taxed, and that he be and remain in custody until this sentence be complied with.

January 23, 1853.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, Benjamin K. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 23d day of January, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the said United States the seventy-ninth.

[SEAL.]

(Signed) B. K. MILLER, *Clerk.*

And afterwards, to wit, on the said 26th day of January, A. D. 1855, the said petitioner, by his attorney aforesaid, filed an affidavit in support of his said petition, in the words and figures following, to wit:

STATE OF WISCONSIN,
Milwaukee county, ss.

In the matter of the application of Sherman M. Booth to the supreme court of said State, for a writ of habeas corpus.

I, George F. Austin, of the city and county of Milwaukee, in said State, being first duly sworn, on oath depose and say, that I was one of the jury empanelled on the trial of Sherman M. Booth, in the district court of the United States for the district of Wisconsin, at its late session held during the present month, in the said city of Milwaukee, on an indictment for resisting, obstructing and opposing Charles C. Cotton, a deputy marshal, in the execution of process, and for aiding in the escape of Joshua Glover from the custody of said Cotton. I further state, that the verdict of said jury was, that the said defendant, Sherman M. Booth, was guilty, as charged in the fourth and fifth counts of the said indictment, and was not guilty on the first three

counts of said indictment; also, that said jury returned their verdict to the said district court on the evening of Saturday, the thirteenth day of January instant; that said verdict was in writing; that it was written by me, the said George F. Austin, and was subscribed by all of the said jury, and that the said written verdict, so returned by said jury to the said district court, stated that the said defendant was found "not guilty" on the first three counts of the said indictment, and was found "guilty" as charged in the last two counts of said indictment; and further this affiant saith not.

GEO. F. AUSTIN.

Subscribed and sworn to before me, this 24th day of January, A. D. 1855.

M. STEEVER,
Notary Public, residing in Mil. Co., Wis.

THE STATE OF WISCONSIN,
Milwaukee county, ss.

I, Daniel Phelps, being sworn, on oath depose and say, that I was foreman on the jury mentioned in the foregoing affidavit of George F. Austin, and I confirm the whole statement of Mr. Austin, and add, that I handed the verdict to the judge in open court. The judge, on looking at the verdict, remarked, not guilty on the first three counts. I replied to him, yes, not guilty on the first three counts.

DANIEL PHELPS.

Subscribed and sworn to before me, this 24th day of January, 1855.

ALBERT SMITH,
Justice of the Peace.

And afterwards, to wit, on the 26th day of January aforesaid, the following proceedings were had in said cause in said court, to wit:

In the matter of the petition of Sherman M. Booth, for a writ of habeas corpus, &c.

And now, at this day, came the said Sherman M. Booth, by J. H. and B. Paine, his attorneys, and filed his petition herein, and moved the court here for a writ of habeas corpus, in accordance with the prayer of his said petition.

Which said motion having been argued, and the court not being now sufficiently advised of and concerning the same, took time to consider, &c.

And afterwards, to wit, on the 27th day of January, in the year aforesaid, the same being the 36th day of the term, the following further proceedings were had in this cause, to wit:

In the matter of the petition of Sherman M. Booth, for a writ of habeas corpus, &c.

The court being now sufficiently advised of and concerning the motion of the said Sherman M. Booth for a writ of habeas corpus, in accordance with the prayer of his petition on file:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day, the court being sufficiently advised of and concerning the motion of this defendant for a new trial and in arrest of judgment, doth order, that they be, and hereby are, overruled. Whereupon, the court doth sentence Sherman M. Booth, that he be imprisoned for the term of one month in the jail of Milwaukee county, or in such other prisons or places as the court or the judge thereof may from time to time direct, and that he pay a fine of one thousand dollars and the costs of prosecution to be taxed, and that he be and remain in custody until this sentence be complied with.

January 23, 1853.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, Benjamin K. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 23d day of January, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the said United States the seventy-ninth.

[SEAL.]

(Signed) B. K. MILLER, *Clerk.*

And afterwards, to wit, on the said 26th day of January, A. D. 1855, the said petitioner, by his attorney aforesaid, filed an affidavit in support of his said petition, in the words and figures following, to wit:

STATE OF WISCONSIN,
Milwaukee county, ss.

In the matter of the application of Sherman M. Booth to the supreme court of said State, for a writ of habeas corpus.

I, George F. Austin, of the city and county of Milwaukee, in said State, being first duly sworn, on oath depose and say, that I was one of the jury empanelled on the trial of Sherman M. Booth, in the district court of the United States for the district of Wisconsin, at its late session held during the present month, in the said city of Milwaukee, on an indictment for resisting, obstructing and opposing Charles C. Cotton, a deputy marshal, in the execution of process, and for aiding in the escape of Joshua Glover from the custody of said Cotton. I further state, that the verdict of said jury was, that the said defendant, Sherman M. Booth, was guilty, as charged in the fourth and fifth counts of the said indictment, and was not guilty on the first three

counts of said indictment; also, that said jury returned their verdict to the said district court on the evening of Saturday, the thirteenth day of January instant; that said verdict was in writing; that it was written by me, the said George F. Austin, and was subscribed by all of the said jury, and that the said written verdict, so returned by said jury to the said district court, stated that the said defendant was found "not guilty" on the first three counts of the said indictment, and was found "guilty" as charged in the last two counts of said indictment; and further this affiant saith not.

GEO. F. AUSTIN.

Subscribed and sworn to before me, this 24th day of January, A. D. 1855.

M. STEEVER,
Notary Public, residing in Mil. Co., Wis.

THE STATE OF WISCONSIN,
Milwaukee county, ss.

I, Daniel Phelps, being sworn, on oath depose and say, that I was foreman on the jury mentioned in the foregoing affidavit of George F. Austin, and I confirm the whole statement of Mr. Austin, and add, that I handed the verdict to the judge in open court. The judge, on looking at the verdict, remarked, not guilty on the first three counts. I replied to him, yes, not guilty on the first three counts.

DANIEL PHELPS.

Subscribed and sworn to before me, this 24th day of January, 1855.

ALBERT SMITH,
Justice of the Peace.

And afterwards, to wit, on the 26th day of January aforesaid, the following proceedings were had in said cause in said court, to wit:

In the matter of the petition of Sherman M. Booth, for a writ of habeas corpus, &c.

And now, at this day, came the said Sherman M. Booth, by J. H. and B. Paine, his attorneys, and filed his petition herein, and moved the court here for a writ of habeas corpus, in accordance with the prayer of his said petition.

Which said motion having been argued, and the court not being now sufficiently advised of and concerning the same, took time to consider, &c.

And afterwards, to wit, on the 27th day of January, in the year aforesaid, the same being the 36th day of the term, the following further proceedings were had in this cause, to wit:

In the matter of the petition of Sherman M. Booth, for a writ of habeas corpus, &c.

The court being now sufficiently advised of and concerning the motion of the said Sherman M. Booth for a writ of habeas corpus, in accordance with the prayer of his petition on file:

It is considered and ordered, that said motion be allowed, and that two writs of habeas corpus be issued in this cause in conformity to the statute; one directed to S. V. R. Ableman, esq., the U. S. marshal for the district of Wisconsin, and one directed to S. S. Conover, esq., the sheriff of Milwaukee county.

And thereupon, two writs of habeas corpus issued out of and under the seal of said court, one directed to Stephen V. R. Ableman, the *the* marshal of the U. S. for the district of Wisconsin, and one to S. S. Conover, the sheriff, &c.; which said writs were in the words and figures following, to wit:

THE STATE OF WISCONSIN,
Supreme Court, ss.

The State of Wisconsin to Stephen V. R. Ableman.

You are hereby commanded to have the body of Sherman M. Booth, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Sherman M. Booth shall be called or charged, before the supreme court of the State of Wisconsin, at Madison, the capital of said State, in Dane county, immediately after the receipt of this writ, to do and receive what shall then and there be considered concerning the said Sherman M. Booth. And have you then and there this writ.

Witness the Hon. Edward V. Whiton, chief justice of the
[SEAL.] supreme court of the State of Wisconsin, at Madison, this twenty-seventh day of January, A. D. 1855.

Attest: LA FAYETTE KELLOGG,
Clerk Supreme Court, Wisconsin.

THE STATE OF WISCONSIN,
Supreme Court, ss.

The State of Wisconsin to Samuel S. Conover, sheriff of the county of Milwaukee, in said State.

You are hereby commanded to have the body of Sherman M. Booth, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Sherman M. Booth shall be called or charged, before the supreme court of the State of Wisconsin, at Madison, the capital of said State, in Dane county, immediately after the receipt of this writ, to do and receive what shall then and there be considered concerning the said Sherman M. Booth. And have you then and there this writ.

Witness the Hon. Edward V. Whiton, chief justice of the
[L. S.] supreme court of the State of Wisconsin, at Madison, this twenty-seventh day of January, A. D. 1855.

Attest: LA FAYETTE KELLOGG,
Clerk Supreme Court, Wisconsin.

And afterwards, to wit, on the 39th day of the term aforesaid, the same being the 30th day of January, A. D. 1855, the marshal, to whom

one of the above writs of habeas corpus was directed, made return thereto in the words and figures following:

To the Supreme Court of the State of Wisconsin.

Without acknowledging the jurisdiction of the honorable court in the premises, I respectfully make return to this writ of habeas corpus, that, in pursuance of a sentence of the district court of the United States for the district of Wisconsin, I, as marshal for said district, conveyed one Sherman M. Booth to the jail of Milwaukee county, and delivered him into the custody of the sheriff for said county, or jailor in said jail, who received him into his custody by virtue of a law of said State, that all sheriffs, jailors, prison-keepers, and theirs and each and every of their deputies, within this State, to whom any person or persons shall be sent or committed by virtue of legal process, issued by or under the authority of the United States, shall be, and they are hereby, enjoined and required to receive such persons into custody and to keep them safely, until they be discharged by due course of the laws of the United States; and all such sheriffs, jailors, prison-keepers, and their deputies, offending in the premises, shall be liable to the same pains and penalties, and the parties aggrieved shall be entitled to the same remedies against them, or any of them, as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this State.

That if by said sentence the said sheriff had not received said person into his custody, I should have so reported to the court, and have conveyed him to some other place or prison, as I should be commanded.

But the said person being so received into the custody of the sheriff or jailor of said county, I have no further custody or control of the body of the said Sherman M. Booth, and cannot, therefore, have his body in court, as commanded in said writ.

S. V. R. ABLEMAN, *U. S. Marshal.*

And afterwards, to wit, on the day and year last aforesaid, S. S. Conover, esq., the sheriff, to whom one of the said writs of habeas corpus was directed, made return thereto in the words and figures following:

STATE OF WISCONSIN,
Supreme Court, ss.

I, Samuel S. Conover, sheriff of Milwaukee county, in said State, to whom the within writ is directed, do make return thereto, that I had the within named Sherman M. Booth in my custody, as said sheriff, in the jail of said Milwaukee county, at the time the within writ was served upon me, and have him, the said Booth, now here in my custody before the said court, in obedience to the command of this writ. I further make return, that said Booth was committed to my custody by one Stephen V. R. Ableman, the marshal of the United States for the district of Wisconsin, who committed the said Booth by virtue of

a transcript, a true copy of which is hereto annexed, marked "A," which is the only paper, process or warrant, left with me by said Ableman, authorizing me to detain said Booth; which said transcript sets forth the true cause of the said imprisonment of said Booth, and is the only paper, warrant, process or authority, by virtue of which I detain the said Booth.

January 30, 1855.

S. S. CONOVER,
Sheriff Milwaukee county, Wisconsin.

"A."

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, on the first Monday (being the first day) of January, A. D. 1855, at the city of Milwaukee, in said district of Wisconsin, present the Honorable Andrew G. Miller, judge of said court, presiding.

On the fourth day of the said term, to wit, on the fourth day of January, A. D. 1855, the following proceedings were had, to wit:

This day came into court the grand jury, and presented to the court the following bill of indictment, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH.

Indictment for obstructing, resisting, and opposing the execution of process, and aiding, abetting, and assisting the escape of Joshua Glover from the custody of the deputy U. S. marshal. "A true bill."

Which said bill of indictment is as follows:

UNITED STATES OF AMERICA,

District Court of the United States for the district of Wisconsin, of the term of January, in the year of our Lord one thousand eight hundred and fifty-five.

DISTRICT OF WISCONSIN, *ss.*

The jurors of the United States empanelled and sworn to inquire in and for the body of the district of Wisconsin, upon their oath present, that heretofore, to wit, on the ninth day of March, in the year of our Lord one thousand eight hundred and fifty-four, a certain warrant directed to the marshal of the said district of Wisconsin was duly awarded and issued by the Honorable Andrew G. Miller, judge of the district court of the United States for the said district of Wisconsin, for the apprehension of one Joshua Glover, which said warrant was duly delivered to Charles C. Cotton, esquire, an officer of the United States, to wit, a deputy of the marshal of the United States for the said district of Wisconsin, at Milwaukee, in the district aforesaid, on the said ninth day of March, in the year aforesaid, and was of the purport and effect following, that is to say:

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

The President of the United States of America to the Marshal of the
[SEAL.] District of Wisconsin, greeting:

Whereas, Benammi S. Garland hath made affidavit before me, the judge of the district court of the United States of America, for the district of Wisconsin, that one Joshua Glover, a negro man, owes him labor and service according to the laws of Missouri, wherein he, the said affiant, lives and resides; and that he, the said Joshua Glover, ran away from said affiant in the county of St. Louis and State of Missouri, in the spring of one thousand eight hundred and fifty-two; and that he, the said Joshua Glover, he believes, is now in this State of Wisconsin.

And said affiant further says, that, at the time of his said running away, he, the said Joshua Glover, was, and is now, a slave for life, and owned by him, the said affiant; and, as such slave, did owe, and still does owe him, this affiant, labor and service, under and by virtue of the said laws of Missouri, from whence the said Joshua Glover escaped.

The said Joshua Glover is described in said affidavit to be forty-four or forty-five years of age, about five feet six or eight inches high, spare built, with rather long legs, very prominent knuckles, has large feet and hands, has a full head of wool, eyes small and inflamed, is of dissipated habits, is of rather an ashy black color.

These are therefore to command you, the said marshal, to apprehend said fugitive, Joshua Glover, if to be found in your district, and bring him forthwith before me, at the city of Milwaukee, so that the matters alleged against him may be inquired into according to law.

In witness whereof, I have hereto set my hand and seal at Milwaukee, in the district aforesaid, this ninth day of March, A. D. 1854.

A. G. MILLER,
Judge District Court of the United States,
For the District of Wisconsin.

And the jurors aforesaid do further present, that the said warrant being duly awarded, issued, and delivered as aforesaid, afterwards, to wit, on the eleventh day of March, in the year aforesaid, at Milwaukee aforesaid, in the said district of Wisconsin, the said Charles C. Cotton, then and there being an officer of the United States, to wit, a deputy of the marshal of the United States for the district aforesaid, attempted to serve and execute the said warrant in manner and form as he was therein commanded, and that Sherman M. Booth, late of Milwaukee, in said district, with divers other persons, to the said jurors unknown, being then and there well and truly informed of the premises, then and there with force and arms did knowingly, wilfully, and unlawfully obstruct, resist, and oppose the said Charles C. Cotton, then and there being an officer of the said United States as aforesaid, to wit, a deputy of the marshal of the United States for said district, in attempting, as aforesaid, then and there to serve and execute the said

warrant in manner and form as he was therein commanded, to the great damage of the said Charles C. Cotton, to the great hindrance and obstruction of justice, to the evil example of all others in the like cases offending, against the form of the statute of the United States in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that on the eleventh day of March, in the year of our Lord one thousand eight hundred and fifty-four, at Milwaukee, in said district of Wisconsin, the said Sherman M. Booth, with force and arms, did knowingly and wilfully obstruct, resist, and oppose one Charles C. Cotton, a deputy of one Stephen V. R. Ableman, marshal of the United States for the district of Wisconsin, and an officer of the United States, in serving and attempting to serve and execute a certain warrant and legal process, which, before that time, to wit, on the ninth day of March, in the year last aforesaid, had been duly issued under the hand and seal of Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, and directed to the marshal of the said district of Wisconsin, which the said Charles C. Cotton, in due and lawful execution of his said office, had then and there in his hands and possession for service of the same, and which he was then and there serving, and attempting to serve and execute, which said warrant commanded the said Charles C. Cotton to apprehend one Joshua Glover, and have him forthwith before the said judge, that the matters alleged against him might be inquired into according to law, against the form of the statute of the United States in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that on the eleventh day of March, in the year of our Lord one thousand eight hundred and fifty-four, at Milwaukee, in the district of Wisconsin aforesaid, the said Sherman M. Booth, with force and arms, did knowingly and wilfully obstruct, resist, and oppose one Charles C. Cotton, a deputy of Stephen V. R. Ableman, marshal of the United States for the said district of Wisconsin, and an officer of the United States, in serving, and attempting to serve and execute a certain legal process, which, before that time, to wit, on the ninth day of March, in the year last aforesaid, had been duly issued by Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, and duly delivered for execution to the said Charles C. Cotton, wherein and whereby, and in pursuance of the command, whereof the said Cotton was then and there lawfully retaining, detaining, and holding in custody, one Joshua Glover, for the further hearing and determination of a certain complaint upon which a warrant before that time, to wit, on the said ninth day of March, in the year last aforesaid, had been duly issued under the hand and seal of Andrew G. Miller, judge as aforesaid, by force of which said warrant the said Joshua Glover had been duly arrested and apprehended by the said Cotton, and in execution of the same, on the said eleventh day of March, had been brought by said Cotton and committed to the com-

mon jail of the county of Milwaukee, in the district aforesaid, against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that Sherman M. Booth, late of Milwaukee, in the district of Wisconsin, on the eleventh day of March, in the year one thousand eight hundred and fifty-four, at the said city of Milwaukee, in the said district of Wisconsin, with force and arms, did knowingly and willingly aid, abet, and assist one Joshua Glover to escape from the custody of Charles C. Cotton, then and there being a deputy marshal of the United States for the said district of Wisconsin, he, the said Joshua Glover, having been theretofore apprehended by, and then and there being in the custody of the said Charles C. Cotton, as such deputy marshal of the United States for the said district as aforesaid, by virtue of and in obedience to a certain warrant theretofore issued by Andrew G. Miller, then and there being the judge of the district court of the United States for the said district of Wisconsin, which, the said warrant, is in the words and figures following, that is to say:

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

The President of the United States of America to the Marshal of the [SEAL.] District of Wisconsin, greeting:

Whereas, Benammi S. Garland hath made affidavit before me, the judge of the district court of the United States of America, for the district of Wisconsin, that one Joshua Glover, a negro man, owes him labor and service according to the laws of Missouri, wherein he, the said affiant, lives and resides, and that he, the said Joshua Glover, ran away from said affiant in the county of St. Louis and State of Missouri, in the spring of one thousand eight hundred and fifty-two, and that he, the said Joshua Glover, he believes, is now in this State of Wisconsin.

And said affiant further says, that at the time of his said running away, he, the said Joshua Glover, was, and is now, a slave for life, and owned by him, the said affiant, and as such slave, did owe, and still does owe him, this affiant, labor and service, under and by virtue of the said laws of Missouri, from whence the said Joshua Glover escaped.

The said Joshua Glover is described in said affidavit to be forty-four or forty-five years of age, about five feet six or eight inches high, spare built, with rather long legs, very prominent knuckles, has large feet and hands, has a full head of wool, eyes small and inflamed, is of dissipated habits, is of rather an ashy black color.

These are therefore to command you, the said marshal, to apprehend said fugitive, Joshua Glover, if to be found in your district, and bring him forthwith before me, that the matters alleged against him may be inquired into according to law.

In witness whereof, I have hereunto set my hand and seal at Milwaukee, in the district aforesaid, this ninth day of March, A. D. 1854.

A. G. MILLER,
Judge District Court of the United States,
For the District of Wisconsin.

Against the form of the statute of the United States, in such made and provided, and against their peace and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that on the ninth day of March, in the year one thousand eight hundred and fifty-four, one Bennami S. Garland appeared before Andrew G. Miller, then and there being the judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district of Wisconsin, and then and there made oath in writing before the said Andrew G. Miller, as such judge aforesaid, that he resided near the city of St. Louis, in the State of Missouri; that Joshua Glover, a negro, had been, and then was, held to service and labor to him, the said Benammi S. Garland, as a slave in the said State of Missouri, and then still owed service and labor to him, the said Benammi S. Garland, as such slave; that the said Joshua ran away from the said Benammi S. Garland, in the county of St. Louis, in the State of Missouri, in the spring of 1852; that he, the said Benammi S. Garland, had ascertained, and verily believed, that the said Joshua then was in the State of Wisconsin, at or near the city of Racine; that at the time of the running away and escape of said Joshua he was a slave for life, and under and by virtue of the laws of the State of Missouri, was a slave of him, the said Benammi S. Garland, and was then such slave, and had owed, and then still owed labor and service, under and by virtue of said laws, to him, the said Benammi S. Garland; that said Joshua then was about forty-four or forty-five years of age, about five feet six or eight inches high, spare built, with rather long legs, very prominent knuckles, had large feet and hands, had a full head of wool, eyes small and inflamed, was of dissipated habits, was of rather an ashy black color, had one of his shoulders stiff from dislocation, and had stooping shoulders, and a slow gait; that he, the said Benammi S. Garland, purchased said Joshua, as a slave for life, in the State of Missouri, and under and by virtue of the laws of said State, on the first day of January, A. D. 1849, and had never alienated his title to said slave, nor released him from the labor and service so due to him as aforesaid; that the said Benammi S. Garland was a farmer, and carried on a farm about four miles from said city of St. Louis; that he had used and employed said Joshua as foreman on his said farm, from the time of said purchase to the time of the escape of said Joshua as aforesaid; that he had seen the said Joshua daily, knew him well, and at sight could identify him with certainty; that the said Joshua had been, and was of great value to him, the said Benammi S. Garland, as his slave for life, and on account of the labor and services of the said Joshua so due to him as aforesaid.

And the jurors aforesaid do further present, that thereupon the said Andrew G. Miller, then and there being such judge as aforesaid, afterwards, to wit, on the same day and year, and at the place last aforesaid, issued a certain warrant under his hand and seal, bearing date the day and year last aforesaid, and directed in the name of the President of the United States of America to the marshal of the said district of Wisconsin, reciting that whereas the said Benammi S. Garland had made affidavit before him, the said Andrew G. Miller, the judge of the district court of the United States of America for the district of Wisconsin, that one Joshua Glover, a negro man, owed him, the said Benammi S. Garland, labor and service according to the laws of Missouri, wherein he, the said affiant, Benammi S. Garland, then lived and resided; and that he, the said Joshua Glover, had run away from the said affiant, in the county of St. Louis and State of Missouri, in the spring of one thousand eight hundred and fifty-two, and that he, the said Joshua Glover, he, the said Benammi S. Garland believed, was then in this State of Wisconsin.

And the said affiant further said, that at the time of his said running away, he, the said Joshua Glover, had been, and then was, a slave for life, and owned by him, the said affiant, and as such slave had owed, and then still did owe, him the said affiant labor and service, under and by virtue of the laws of Missouri, from whence the said Joshua Glover escaped.

The said Joshua Glover was described in said affidavit to be forty-four or forty-five years of age, about five six or eight inches high, spare built, with rather long legs, very prominent knuckles, had large feet and hands, had a full head of wool, eyes small and inflamed, was of dissipated habits, was of rather an ashy black color; and therefore commanding him, the said marshal, to apprehend the said fugitive, Joshua Glover, if to be found in his, the said marshal's district, and bring him forthwith before him, the said Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, so that the matters alleged against him might be inquired into according to law; which said warrant was afterwards, to wit, on the day and year last aforesaid, at the place last aforesaid, delivered to Charles C. Cotton, then and there being a deputy marshal of the United States for the said district of Wisconsin, to be by him executed; and that the said Charles C. Cotton, then and there being such deputy marshal as aforesaid, afterwards, to wit, on the eleventh day of March, in the year last aforesaid, at the place last aforesaid, by virtue of and in obedience to the said warrant, apprehended the said Joshua Glover, in the said warrant named, and then and there held him, the said Joshua Glover, in custody.

And the jurors aforesaid do further present, that the said Sherman M. Booth, afterwards, to wit, on the day and year last aforesaid, and at the place last aforesaid, with force and arms, did unlawfully, knowingly, and willingly aid, abet, and assist the said Joshua Glover to escape from the said custody of the said Charles C. Cotton, against the

In witness whereof, I have hereunto set my hand and seal at Milwaukee, in the district aforesaid, this ninth day of March, A. D. 1854.

A. G. MILLER,
Judge District Court of the United States,
For the District of Wisconsin.

Against the form of the statute of the United States, in such made and provided, and against their peace and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that on the ninth day of March, in the year one thousand eight hundred and fifty-four, one Bennami S. Garland appeared before Andrew G. Miller, then and there being the judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district of Wisconsin, and then and there made oath in writing before the said Andrew G. Miller, as such judge aforesaid, that he resided near the city of St. Louis, in the State of Missouri; that Joshua Glover, a negro, had been, and then was, held to service and labor to him, the said Benammi S. Garland, as a slave in the said State of Missouri, and then still owed service and labor to him, the said Benammi S. Garland, as such slave; that the said Joshua ran away from the said Benammi S. Garland, in the county of St. Louis, in the State of Missouri, in the spring of 1852; that he, the said Benammi S. Garland, had ascertained, and verily believed, that the said Joshua then was in the State of Wisconsin, at or near the city of Racine; that at the time of the running away and escape of said Joshua he was a slave for life, and under and by virtue of the laws of the State of Missouri, was a slave of him, the said Benammi S. Garland, and was then such slave, and had owed, and then still owed labor and service, under and by virtue of said laws, to him, the said Benammi S. Garland; that said Joshua then was about forty-four or forty-five years of age, about five feet six or eight inches high, spare built, with rather long legs, very prominent knuckles, had large feet and hands, had a full head of wool, eyes small and inflamed, was of dissipated habits, was of rather an ashy black color, had one of his shoulders stiff from dislocation, and had stooping shoulders, and a slow gait; that he, the said Benammi S. Garland, purchased said Joshua, as a slave for life, in the State of Missouri, and under and by virtue of the laws of said State, on the first day of January, A. D. 1849, and had never alienated his title to said slave, nor released him from the labor and service so due to him as aforesaid; that the said Benammi S. Garland was a farmer, and carried on a farm about four miles from said city of St. Louis; that he had used and employed said Joshua as foreman on his said farm, from the time of said purchase to the time of the escape of said Joshua as aforesaid; that he had seen the said Joshua daily, knew him well, and at sight could identify him with certainty; that the said Joshua had been, and was of great value to him, the said Benammi S. Garland, as his slave for life, and on account of the labor and services of the said Joshua so due to him as aforesaid.

And the jurors aforesaid do further present, that thereupon the said Andrew G. Miller, then and there being such judge as aforesaid, afterwards, to wit, on the same day and year, and at the place last aforesaid, issued a certain warrant under his hand and seal, bearing date the day and year last aforesaid, and directed in the name of the President of the United States of America to the marshal of the said district of Wisconsin, reciting that whereas the said Benammi S. Garland had made affidavit before him, the said Andrew G. Miller, the judge of the district court of the United States of America for the district of Wisconsin, that one Joshua Glover, a negro man, owed him, the said Benammi S. Garland, labor and service according to the laws of Missouri, wherein he, the said affiant, Benammi S. Garland, then lived and resided; and that he, the said Joshua Glover, had run away from the said affiant, in the county of St. Louis and State of Missouri, in the spring of one thousand eight hundred and fifty-two, and that he, the said Joshua Glover, he, the said Benammi S. Garland believed, was then in this State of Wisconsin.

And the said affiant further said, that at the time of his said running away, he, the said Joshua Glover, had been, and then was, a slave for life, and owned by him, the said affiant, and as such slave had owed, and then still did owe, him the said affiant labor and service, under and by virtue of the laws of Missouri, from whence the said Joshua Glover escaped.

The said Joshua Glover was described in said affidavit to be forty-four or forty-five years of age, about five six or eight inches high, spare built, with rather long legs, very prominent knuckles, had large feet and hands, had a full head of wool, eyes small and inflamed, was of dissipated habits, was of rather an ashy black color; and therefore commanding him, the said marshal, to apprehend the said fugitive, Joshua Glover, if to be found in his, the said marshal's district, and bring him forthwith before him, the said Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, so that the matters alleged against him might be inquired into according to law; which said warrant was afterwards, to wit, on the day and year last aforesaid, at the place last aforesaid, delivered to Charles C. Cotton, then and there being a deputy marshal of the United States for the said district of Wisconsin, to be by him executed; and that the said Charles C. Cotton, then and there being such deputy marshal as aforesaid, afterwards, to wit, on the eleventh day of March, in the year last aforesaid, at the place last aforesaid, by virtue of and in obedience to the said warrant, apprehended the said Joshua Glover, in the said warrant named, and then and there held him, the said Joshua Glover, in custody.

And the jurors aforesaid do further present, that the said Sherman M. Booth, afterwards, to wit, on the day and year last aforesaid, and at the place last aforesaid, with force and arms, did unlawfully, knowingly, and willingly aid, abet, and assist the said Joshua Glover to escape from the said custody of the said Charles C. Cotton, against the

form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

J. R. SHARPSTEIN,
U. S. District Att'y for Wisconsin.

And afterwards, to wit, on the eighth day of the term, to wit, on the ninth day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day came the defendant and his counsel, and moved the court to quash the indictment for reasons filed, and the same being argued, on consideration whereof, it is ordered by the court that the said motion be, and hereby is, overruled.

And the defendant appeared with his counsel, Messrs. James H. Paine and Byron Paine, and waived an arraignment, pleaded not guilty, and of this he puts himself upon the country. Replication, &c. And the district attorney doth the like. Issue.

And afterwards, to wit, on the ninth of the said term, to wit, on the tenth day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day came the defendant, with his counsel, and challenged the array of jurors for reasons filed, and the same being argued, it is ordered by the court that the said challenge be, and hereby is, overruled. And came the district attorney, and the said defendant, with his counsel, and the issue herein joined came on to be tried, whereupon a jury was called to try the same, who came, to wit: Cicero Comstock, Peter Martineau, Henry C. West, Daniel Phelps, Benjamin R. Hinckley, Andrew Elbe, John Wiler, William Finkler, Hiram J. Ross, John H. Butler, Joseph R. Treat, and George F. Austin, twelve free, honest, and lawful men, of the district, who were severally sworn and empanelled by the court, and the trial not being concluded, it is ordered by the court that the further hearing be, and is hereby adjourned until to-morrow morning.

And afterwards, to wit, on the tenth day of said term, to wit, on the eleventh day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day came the district attorney and the said defendant, Sherman M. Booth, with his counsel, and the trial of the issue herein was

resumed, and not being concluded, it is ordered by the court that the further hearing be, and is hereby, adjourned until to-morrow morning.

And afterwards, to wit, on the eleventh day of the said term, to wit, on the twelfth day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day came the district attorney and the said defendant, Sherman M. Booth, with his counsel, and the trial of the issue herein was resumed, and not being concluded, it is ordered by the court that the further hearing be, and is hereby, adjourned until to-morrow morning.

And afterwards, to wit, on the twelfth day of the said term, to wit, on the thirteenth day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day came the district attorney and the said defendant, Sherman M. Booth, with his counsel, and the trial of the issue herein was resumed. And the said jurors of the jury aforesaid, being charged by the court, on their said oaths respectively do say, that the defendant, Sherman M. Booth, is guilty in manner and form as he stands indicted in the fourth and fifth counts of the indictment.

And afterwards, to wit, on the fourteenth day of the term, to wit, on the sixteenth day of January, A. D. 1855, the following proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day came the defendant, by his counsel, and moved the court for a new trial of the issue herein, and to arrest the judgment in this cause, for reasons filed.

And afterwards, to wit, on the eighteenth day of the term, to wit, on the twentieth day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day the motion of the defendant for a new trial, and in arrest of judgment, came on to be heard, and was argued by counsel, and the court not being sufficiently advised of, and concerning the same, took time to consider.

And afterwards, to wit, on the twentieth day of the said term, to wit, on the 23d day of January, A. D. 1855, the following other proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
SHERMAN M. BOOTH. } Criminal Indictment.

This day the court being sufficiently advised of and concerning the motions of this defendant for a new trial, and in arrest of judgment, doth order that they be, and hereby are, overruled.

Whereupon the court doth sentence Sherman M. Booth that he be imprisoned for the term of one month in the jail of Milwaukee county, and in such other prisons or places as the court or the judge thereof may from time to time direct, and that he pay a fine of one thousand dollars and the costs of prosecution, to be taxed, and that he be and remain in custody until this sentence be complied with.

January 23, 1855.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, Benjamin K. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify, that I have compared the writings annexed to this certificate, and they are true copies of their respective originals now on file, and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of said court, at the city of Milwaukee, in the said district of Wisconsin, this 23d day of January, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the said United States the seventy-ninth.

[L. S.]

B. K. MILLER, *Clerk.*

And afterwards, to wit, on the 30th day of January aforesaid, came the said Sherman M. Booth, by J. H. & B. Paine, his attorneys, and filed in open court his demurrer to the sheriff's return to said writ of habeas corpus in the words and figures following, to wit:

STATE OF WISCONSIN,
Supreme Court, ss.

In the matter of the application of Sherman M. Booth for a writ of habeas corpus.

And now comes the said Sherman M. Booth, by his counsel, J. H. Paine and B. Paine, and demurs to the return of the said Samuel S. Conover, sheriff of said Milwaukee county, to the said writ, and says, that the matters and things set forth in said return are not sufficient in law to justify the said detention and imprisonment of him, the said Sherman M. Booth, wherefore he prays to be discharged, &c.

By J. H. & B. PAINE,
Atty's for Petitioner.

Upon the filing of which said demurrer, the following proceedings were had in said cause, to wit:

In the matter of the petition of Sherman M. Booth for a writ of habeas corpus, &c.

And now, at this day, came S. S. Conover, esq., sheriff of Milwaukee county, and made return to the writ of habeas corpus issued herein, and directed to the said sheriff, that as commanded by the said writ he had the body of the said Sherman M. Booth now before the court. Whereupon it is ordered that the hearing of this matter be postponed until Friday next, at 10 o'clock a. m., and that said petitioner cause notice of the time, &c., of such hearing, to be served some time during the day to-morrow, on the district attorney of the United States for the district of Wisconsin, and that until the time of such hearing, the said Sherman M. Booth is remanded into the custody of the said sheriff of Milwaukee county.

And afterwards, to wit, on the forty-second day of said term, to wit, on the second day of February, A. D. 1855, the said petitioner, by his attorneys aforesaid, filed his notice of hearing, &c., in the words and figures following, to wit:

THE STATE OF WISCONSIN,
Supreme Court.

To JOHN R. SHARPSTEIN, Esq.,
United States District Attorney, &c.

SIR: You will please to take notice that on the application of Sherman M. Booth, a writ of habeas corpus was issued by the supreme court of the State of Wisconsin, now sitting in the capitol at Madison in said State, on the 27th day of January, A. D. 1855, directed to Samuel Conover, sheriff of the county of Milwaukee, requiring the said Samuel Conover to have the body of the said Sherman M. Booth forthwith before said supreme court, together with the time and cause of the imprisonment and detention of the said Booth by the said Samuel Conover, to do and receive what shall then and there be considered concerning said Booth, &c.; which writ the said Samuel Conover, as such sheriff, obeyed on the 30th day of January, 1855, by producing before said court the body of the said Sherman M. Booth, at the capitol in said Madison, Dane county, with a return that said Booth was committed to the jail of Milwaukee county, by the marshal of the United States for the district of Wisconsin, by virtue of certain documents from the United States court, of said district, copies of which are filed as part of the return of said sheriff.

The hearing of the matter was then adjourned till Friday, the second day of February next, 10 o'clock a. m.

As attorney for the United States for said district, you can appear on the second day of February next, at 10 o'clock a. m., before said supreme court, in the capitol, to protect the rights of the United States if you think proper.

You will further take notice that a similar writ, at the same time, was issued by said supreme court, directed to the marshal of said district of Wisconsin for the United States, to which he has made a return, &c., and which will also be heard on the said second day of February, before said court, at Madison aforesaid.

January 31, 1855.

J. H. PAINE & SONS,
Atty's for S. M. Booth.

Endorsement: Rec'd a notice of which the within is a copy.
January 31, 1855.

J. R. SHARPSTEIN,
U. S. District Att'y, Wisconsin.

Upon the filing of which said notice the following proceedings were had in said cause, to wit:

Habeas Corpus.

In the matter of the petition of Sherman M. Booth, to be discharged from illegal imprisonment.

And now at this day came the said petitioner and his demurrer to the return of the sheriff of Milwaukee county, to the writ of habeas corpus issued herein, having been argued by J. H. and B. Paine for said petitioner, and the court not being now sufficiently advised of and concerning the same, took time to consider of its opinion.

And afterwards, to wit, on the forty-third day of said term, to wit, on the third day of February, A. D. 1855, the following order and judgment was entered by said court in said cause, to wit:

In the matter of the petition of Sherman M. Booth for a writ of habeas corpus, for discharge from illegal imprisonment.

Stephen V. R. Ableman, to whom one of the writs issued in pursuance of said petition was directed, having made return that said Booth was not in his custody; and Samuel S. Conover, to whom the other writ issued in pursuance of said petition was directed, having, in obedience to the command of said writ, produced the Sherman M. Booth here before this court, and made return to said writ, dated on the thirtieth day of January, A. D. 1855, setting forth the cause of said imprisonment; and the said petitioner having, by his counsel, demurred to the said return, and it having been argued by counsel, and it appearing to the court that the matters and things set forth in the return of the said Conover are insufficient in law to justify the said imprisonment and detention of the said Booth; and said imprisonment appearing to be illegal, therefore it is considered and adjudged by the court, that the said demurrer be sustained, and that the said Sherman M. Booth be, and he hereby is, forever discharged from said imprisonment and restraint.

And afterwards, to wit, on the 21st day of March, A. D. 1855, came Robert E. Gillet, and filed with the papers in said cause his affidavit of

the service of the said writs of habeas corpus upon the said S. V. R. Ableman and S. S. Conover, in the words and figures following, to wit:

STATE OF WISCONSIN,
Milwaukee county, ss.

I, Robert E. Gillett, being duly sworn, do say, that served the writ of habeas corpus, a copy of which is hereunto annexed and marked "A," by delivering said original writ to Stephen V. R. Ableman, named in said writ, on this 27th day of January, A. D. 1855. And I do further say, that at the time of said service, I tendered the fees required by law to said Ableman; and I do further say, that at the time of said service, I also delivered to said Ableman a bond, conditioned as required by law, a copy of which is hereunto annexed and marked "B," and made a part of this return.

And I do further say, that I am an elector of Milwaukee county, in the State of Wisconsin, and further this deponent saith not.

ROBERT E. GILLET.

Subscribed and sworn to before me, this 21st day of March, A. D. 1855.

LA FAYETTE KELLOGG,
Clerk Sup. Ct., Wis.

"A."

THE STATE OF WISCONSIN,
Supreme Court, ss.

The State of Wisconsin to Stephen V. R. Ableman.

You are hereby commanded to have the body of Sherman M. Booth, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Sherman M. Booth shall be called or charged, before the supreme court of the State of Wisconsin, at Madison, the capital of said State, in Dane county, immediately after the receipt of this writ, to do and receive what shall then and there be considered concerning the said Sherman M. Booth. And have you then and there this writ.

Witness the Hon. Edward V. Whiton, chief justice of the
[L. S.] supreme court of the State of Wisconsin, at Madison, this twenty-seventh day of January, A. D. 1855.

Attest: LA FAYETTE KELLOGG,
Clerk Supreme Court, Wisconsin.

"B."

Know all men by these presents, that we, Sherman M. Booth as principal, and Rufus King and Edward D. Holton as sureties, are held and firmly bound unto S. V. R. Ableman, United States marshal for the State of Wisconsin, in the penal sum of three thousand dollars, to the payment of which well and truly to be made to the said S. V. R.

Ableman, his heirs, executors, administrators or assigns, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Signed and sealed this 27th day of January, A. D. 1855.

The condition of this obligation is such, that, whereas the above bounden Sherman M. Booth has obtained from the supreme court of the State of Wisconsin a writ of habeas corpus, issued this 27th day of January, 1855, directed to the said S. V. R. Ableman, commanding him to have the body of the said Booth, imprisoned by him, the said Ableman, before the said supreme court immediately after the receipt of said writ, to do and receive what shall then and there be considered concerning the said Booth:

Now, therefore, if the said Booth shall well and truly pay to the said S. V. R. Ableman the charges of carrying back him, the said Booth, from the said supreme court at Madison, in said State, to the place where said Booth is now imprisoned by said Ableman, if he, the said Booth, shall be remanded by the said supreme court, and if he, the said Booth, does not escape by the way either going to or returning from the place where said Booth is to be taken by said writ, to wit, Madison aforesaid, then this obligation to be void, otherwise of force.

(Signed) S. M. BOOTH, [L. S.]
(Signed) E. D. HOLTON, [L. S.]
(Signed) RUFUS KING. [L. S.]

STATE OF WISCONSIN,
Milwaukee county, ss.

Edward D. Holton and Rufus King, sureties in the within bond, being duly sworn, do each for themselves swear that they are each worth the sum of five thousand dollars, over and above all debts and liabilities.

(Signed) E. D. HOLTON,
(Signed) RUFUS KING.

Subscribed and sworn to before me, this 27th day of January, 1855.
(Signed) M. STEVER, *N. Public.*

STATE OF WISCONSIN,
Milwaukee county, ss.

I, Robert E. Gillett, being duly sworn, do say that I served the original writ of habeas corpus, a copy of which is hereunto annexed and marked "A," by delivering said original writ to Samuel S. Conover, named in said writ, on this 27th day of January, A. D. 1855.

And I do further say, that at the time of said service I tendered the fees required by law to said Conover; and I do further say, that at the time of said service I also delivered to said Conover a bond conditioned, as required by law, a copy of which is hereunto attached and marked "B," and made a part of this return.

And I do further say, that I am an elector of Milwaukee county, in the State of Wisconsin; and further this deponent saith not.

ROB'T E. GILLET.

Subscribed and sworn to before me, this 21st day of March, A. D. 1855.

LA FAYETTE KELLOGG,
Clerk Sup. Court, Wis.

"A."

THE STATE OF WISCONSIN,
Supreme Court, ss.

The State of Wisconsin to Samuel S. Conover, sheriff of the county of Milwaukee, in said State.

You are hereby commanded to have the body of Sherman M. Booth, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Sherman M. Booth shall be called or charged, before the supreme court of the State of Wisconsin, at Madison, the capital of said State, in Dane county, immediately after the receipt of this writ, to do and receive what shall then and there be considered concerning the said Sherman M. Booth. And have you then and there this writ.

Witness the Hon. Edward V. Whiton, chief justice of the su-
[L. S.] preme court of the State, at Madison, this twenty-seventh day of January, A. D. 1855.

Attest: LA FAYETTE KELLOGG,
Clerk Supreme Court, Wisconsin.

"B."

Know all men by these presents, that we, Sherman M. Booth, as principal, and Ira E. Goodall and Herman L. Page, as sureties, are held and firmly bound unto Samuel S. Conover, the sheriff of Milwaukee county, in the penal sum of three thousand dollars, to the payment of which well and truly to be made to the said Sam'l S. Conover, his heirs, executors, administrators, or assigns, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Signed and sealed this 27th day of January, A. D. 1855.

The condition of this obligation is such, that whereas the above bounden Sherman M. Booth has obtained from the supreme court of the State of Wisconsin a writ of habeas corpus, dated this 27th day of January, A. D. 1855, directed to the said Samuel S. Conover, commanding him to have the body of the said Booth imprisoned by him, the said Conover, before the said supreme court, immediately after the receipt of said writ, to do and receive what shall then and there be considered concerning the said Booth: Now, therefore, if the said Booth shall well and truly pay to the said Samuel S. Conover, the charges of carrying back him, the said Booth, from the supreme court, at Madison, in said State, to the place where said Booth is now imprisoned by said Conover, if he, the said Booth, shall be remanded by the said supreme court, and if he, the said Booth, does not escape by the either going to or returning from the place where said Booth is to

be taken by said writ, to wit, Madison aforesaid, then this obligation to be void, otherwise of full force.

SHERMAN M. BOOTH.
IRA E. GOODALL, [L. S.]
HERMAN L. PAGE, [L. S.]

STATE OF WISCONSIN,
Milwaukee county, ss.

Ira E. Goodall and Herman L. Page, sureties in the within bond, being duly sworn, do each for himself swear that they are each worth the sum of five thousand dollars over and above all debts and liabilities.

I. E. GOODALL,
H. L. PAGE.

Subscribed and sworn to before me, this 27th day of January, 1855.

ROBT. E. GILLET,
Notary Public, Milwaukee County.

STATE OF WISCONSIN,
Supreme Court, ss.

I, La Fayette Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify, that the above and foregoing is a true copy of all the record and proceedings in the matter of the application of Sherman M. Booth for a writ of habeas corpus, and to be discharged from imprisonment, &c., as the same remain on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] the seal of said court, at Madison, this 24th day of March, A. D. 1855.

LA FAYETTE KELLOGG,
Clerk Sup. Court, Wisconsin.

December Term, 1856.

A rule having been laid, at the last term of this court, upon the clerk of the supreme court of the State of Wisconsin, to make return of the writ of error heretofore issued from this court to the supreme court of the State of Wisconsin, in the case of the United States vs. Sherman M. Booth, which had, before the issuing of the writ of error, been adjudged and decided in the said court, and due proof having been made that the said rule was duly served on the said clerk within the time thereby directed, and it further appearing that no return to the said rule has yet been made, it is thereupon, this 6th day of March, 1857, ordered by the court, upon the motion of the Attorney General of the United States, that the copy of the record in the said case filed by him be received and entered on the docket of this court, to have the same effect and legal operation as if returned by the clerk with the writ of error, and that the case stand for argument at the next term without further notice to either party.

True copy:

WM. THOS. CARROLL,
Cl'k Sup. Ct. U. S.

6th *March*, 1857.